

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
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MAY 11 2005

**IN THE MATTER OF THE INDIANA  
UTILITY REGULATORY COMMISSION'S  
INVESTIGATION OF ISSUES RELATED TO  
THE IMPLEMENTATION OF THE FEDERAL  
COMMUNICATION COMMISSION'S  
TRIENNIAL REVIEW REMAND ORDER  
AND REMAINING PORTIONS OF THE  
TRIENNIAL REVIEW ORDER**

INDIANA UTILITY  
REGULATORY COMMISSION

CAUSE NO. **42857**

You are hereby notified that on this date the Presiding Officers in this Cause make the following Entry:

A Prehearing Conference, continued from March 15, 2005, was conducted in Cause No. 42749 on May 5, 2005. At the Prehearing Conference it was decided that Cause No. 42749 would be temporarily held in abeyance in order to allow the parties and the Commission time to devote more resources to implementation of the remaining portions of the Federal Communication Commission's ("FCC's") Triennial Review Order ("TRO"), and implementation of the Triennial Review Remand Order ("TRRO"). Implementation of the FCC rules accompanying these FCC orders is an issue that is related to the complaint proceeding in Cause No. 42749. The parties are currently engaged in negotiations to implement these federal rules. These negotiations should continue, and Cause No. 42749 is hereby held in abeyance. Any party, upon written motion, can seek to reschedule a continuation of the Prehearing Conference in Cause No. 42749.

It was also decided at the Prehearing Conference that a separate Commission Cause would be utilized as a forum for issues related to the parties' ongoing negotiations. The parties are currently involved in negotiations in other states, two of which are Michigan and Illinois. The next major step anticipated in those negotiations is the establishment of a disputed issues list by approximately the end of June 2005. Such issues lists should have similar applicability to the parties' relationships in Indiana. It was decided, therefore, that the parties should file a resulting issues list or lists with the Commission as a starting point for a Commission proceeding to ensure timely implementation of governing federal law.

The possible utilization of pending Cause No. 42689 as a forum for these issues was discussed at the Prehearing Conference. Upon further consideration, however, the Presiding Officers have decided that a new Cause should be initiated for consideration of

matters related to implementation of non-vacated portions of the TRO and implementation of the TRRO.

This Entry is being issued simultaneously under both Cause No. 42857, a new Commission-initiated investigation, and Cause No. 42749. The Entry, issued under Cause No. 42857, serves to initiate a Commission proceeding for consideration of matters related to implementation of non-vacated portions of the TRO and implementation of the TRRO. Therefore, the parties' issues list or lists, derived from negotiations in other states, as well as all future relevant filings, should be filed under Cause No. 42857. For purposes of Cause No. 42749, the Entry serves as a record of the status of that proceeding and as notification that all parties to Cause No. 42749, as of the date of this Entry, are hereby also made parties to Cause No. 42857. Accordingly, all parties to Cause No. 42749, as of the date of this Entry, and which are now parties to Cause No. 42857, should receive a copy of this Entry under both Causes Numbers.

The Commission-initiated investigation is commenced pursuant to statutory authority, including, but not necessarily limited to, Ind. Code 8-1-2-58, which provides:

Whenever the Commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate, or can not be obtained, or that an investigation of any matters relating to any public utility should for any reason be made, it may, on its motion, summarily investigate the same, with or without notice.

Ind. Code 8-1-2-59 further provides the Commission with authority to conduct a formal hearing of a matter it investigates.

Ind. Code 8-1-2-1(a) defines "public utility" to include telephone companies:

"Public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by the court, that may own, operate, manage, or control any plant or equipment within the state for the:

(1) Conveyance of telegraph or telephone messages....

Accordingly, this Commission has jurisdiction over the public utility telephone companies that might be affected by this Commission investigation.

While this investigation is initiated under state law, we are cognizant that 47 U.S.C. § 251(d)(3) and 47 U.S.C. § 261 operate to provide some oversight of this Commission-initiated investigation by federal courts. Since our rulings and Commission orders will be informed by, and will inevitably contain, interpretations of federal law, particularly with respect to the TRO and the TRRO, such oversight ensures consistency of

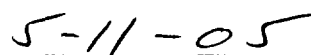
Commission procedures, actions and orders with regard to interconnection and unbundling requirements found in federal law. While this proceeding is not explicitly a 47 U.S.C. § 252 arbitration proceeding, the Commission may consider the use of 252-like negotiation/arbitration and definite timeframe components in this proceeding or potential conversion of this proceeding to a Section 252 proceeding, if appropriate.

If the parties have not filed an issues list by July 8, 2005, in Cause No. 42857, the parties should file a report by July 8, 2005, under that same Cause Number. that explains the progress and status of negotiations in other states. Upon Commission receipt of the parties' issues list, it is anticipated a Prehearing Conference will be scheduled in this Commission-initiated proceeding for the purpose of discussing and deciding how and under what schedule this Cause should move forward.

**IT IS SO ORDERED.**

  
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Judith G. Ripley, Commissioner

  
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William G. Divine, Administrative Law Judge

  
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Date